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Massachusetts Rivers Protection Act

QUESTIONS AND ANSWERS

The Massachusetts Legislature recently passed the Massachusetts Rivers Protection Act, more formally known as "An Act Providing Protection For the Rivers of the Commonwealth". The Rivers Protection Act became effective today when it was signed by Governor Weld. This important law amends the Wetland Protection Act, MGL Chapter 131 Section 40, and provides protection to rivers by regulating activities within a newly established wetland resource area known as the Riverfront Area. A copy of the Massachusetts Rivers Protection Act is enclosed for your information.

Conservation commissioners now have the authority and responsibility to regulate activities within the Riverfront Area under the wetland regulations, 310 CMR 10.00. The Department of Environmental Protection (DEP) will be revising the wetland regulations in the upcoming months to incorporate the provisions of this new law. In the meantime, conservation commissions should use the existing procedures and forms in the wetland regulations to review projects within this area. In addition, the following questions and answers about the Massachusetts Rivers Protection Act provide additional guidance on the major features of this new law. For additional information please contact Richard Tomczyk at 617-292-5512.

1. **What is the purpose of the Massachusetts Rivers Protection Act?**

This Act identifies eight purposes, which are the same as the Wetlands Protection Act's interests: protection of private or public water supply, protection of groundwater, flood control, prevention of storm damage, prevention of pollution, protection of land containing shellfish, protection of wildlife habitat, and protection of fisheries. The Rivers Protection Act establishes a state policy for protecting the natural integrity of the Commonwealth's rivers and to establish open space along rivers.

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2. **When does the Rivers Protection Act become effective?**

Since the Rivers Protection Act contains an emergency preamble, it became effective today, upon its signing. Conservation commissions should immediately begin to implement this Act, under the authority granted in the Wetlands Protection Act.

3. **Does the Rivers Protection Act make any provisions for funding the purchase of open space?**

The Rivers Protection Act has designated $30 million for the acquisition of land bordering rivers and streams.

4. **How does the Rivers Protection Act affect the wetland regulations?**

Besides amending the Wetlands Protection Act, it also directs DEP to revise the wetland regulations by establishing procedures and performance standards for Riverfront Areas. DEP also is directed to establish fees for conservation commissions for administration of the Rivers Protection Act. A riverfront advisory committee will review and offer advice on the draft regulations.

5. **Who will serve on the riverfront advisory committee?**

Commissioner Struhs will appoint an eight member board: four members representing environmental organizations, one developer, and representatives from the real estate, agriculture and aquaculture communities. At least two of these members (one from an environmental organization) must own or have an interest in land located in the Riverfront Area.

6. **Will DEP provide technical assistance and training for conservation commissions on the Rivers Protection Act?**

Yes, DEP will develop an outreach program for conservation commissions on the provisions of this law. In addition, the Rivers Protection Act identifies no less than $100,000 per year for a period of up to five years for technical assistance to conservation commissions.

7. **What area does the Massachusetts Rivers Protection Act protect?**

It protects a newly established wetland resource area - the Riverfront Area.

8. **What is the Riverfront Area?**

In most municipalities the Riverfront Area is 200 feet wide and is measured from each side of the river from the mean annual high water line outward horizontally and parallel to the river.

However, the Riverfront Area is 25 feet in:

* municipalities with a population of 90,000 people or more;
* municipalities with a population density of greater than 9,000 people per square mile;
* areas designated by the Secretary of the Executive Office of Environmental Affairs as a "densely developed area";
* certain identified land within Waltham and Milton (see Section 18, "riverfront area", in the enclosed Rivers Protection Act).

The municipalities with a population of 90,000 or more people or a population density of 9,000 people per square mile (according to the 1990 U. S. Census) are:

Boston	Everett	Malden	Winthrop
Brockton	Fall River	New Bedford	Worcester
Cambridge	Lawrence	Somerville	
Chelsea	Lowell	Springfield	

9. **Does the Riverfront Area have a regulated buffer zone?**

No, the Rivers Protection Act clearly states that there is no Buffer Zone associated with the Riverfront Area.

10. **How is "river" defined in the Rivers Protection Act?**

Any river or stream that is a naturally flowing body of water that empties into any ocean, lake, or other river and that flows throughout the year.

11. **How is the mean annual high water line determined?**

For non-tidal rivers this line can be identified by changes in soils or vegetation between predominantly aquatic and terrestrial areas. Permanent water marks left on bridge abutments, boulders, and vegetation or scouring also can be indicators.

For tidal rivers, the mean high water line is the same as that found in the wetland regulations at 310 CMR 10.23.

12. **Does the Rivers Protection Act identify standards for reviewing proposed projects?**

Two standards are specified in this Act. First, no permit shall be granted for work in the Riverfront Area that would result in a significant adverse impact on the Riverfront Area for the eight purposes. Second, no permit shall be granted if there is a practicable and substantially equivalent economic alternative to the proposed project with less adverse impacts to the eight purposes.

13. **How are these review standards applied?**

The Rivers Protection Act clearly states that projects be located outside the Riverfront Area if they will result in significant adverse impacts to the eight purposes and when a practicable alternative is available. If a practicable alternative is available that could locate a project out of the Riverfront Area it should be chosen. If there is no practicable alternative to locating the project in the Riverfront Area, impacts must be minimized and mitigated so there are no significant adverse impacts to the Riverfront Area. If it is determined that the project will have significant adverse impacts to the Riverfront Area, the project should be denied.

If any part of the Riverfront Area is Salt Marsh or Bordering Vegetated Wetlands (BVW) the strict standards of the wetland regulations that currently exist for these two wetland resource areas also should be used.

14. **What is a practicable alternative under this law?**

An alternative is practicable if it is available and capable of being done after taking into consideration:

- costs and whether such costs are reasonable or prohibitive to the owner;
- existing technology; and
- logistics in light of the overall project purposes.

15. **What should be the scope of alternatives?**

Generally the scope of alternatives to be considered should be commensurate with the scale, purpose and impacts of the proposed activity.

For activities associated with **access** for one dwelling unit the alternatives considered must be limited to the lot, provided the lot is on file with the registry of deeds as of August 1, 1996.

For the creation of real estate subdivisions and other activities, the alternatives analysis must be limited to the area of:

- the subdivided lots;
- any parcels out of which the lots were created;
- any other parcels adjacent to or adjacent through other parcels formerly or presently owned by the same owner at any time on or after August 1, 1996; or
- any land which can reasonably be obtained.

When evaluating whether ownership can be obtained, the costs and whether such cost is reasonable or prohibitive to the owner, existing technology, the proposed use, and logistics in light of the overall project purposes are to be considered.

16. **Who must identify the impacts of a project or activity?**

The burden of proof is on the applicant. The applicant needs to show, by a preponderance of the evidence, that a project will not have significant adverse impacts to the Riverfront Area and the purposes of the Rivers Protection Act.

17. **When are Notices of Intent subject to this new law?**

Projects for which a Notice of Intent has been submitted after August 7, 1996 are subject to the Rivers Protection Act.

18. **Are there filing fees for projects proposed in the Riverfront Area?**

If the Riverfront Area includes one of the existing wetland resource areas or the Buffer Zone the filing fees identified at 310 CMR 10.03(7)(c) continue to apply. If the Riverfront Area does not include any wetland resource areas, there is no filing fee until DEP revises the wetland regulations.

19. **Are there activities or projects that are exempt from the Massachusetts Rivers Protection Act?**

Certain activities and areas are exempt, grandfathered, or covered by other regulations. These are:

* activities that are currently exempt from the Wetlands Protection Act (e.g., agriculture, aquaculture, forestry, mosquito control projects);

* the following areas, activities, or structures in existence as of **August 7, 1996**: any excavation, structures, clearing, driveways, landscaping, utility lines, rail lines, publicly owned airports or marine cargo terminals, bridges over two miles long, septic systems, or parking lots;

* work that has begun on or before **November 1, 1996** for the expansion of any structure, airports and marine cargo terminals owned by a political subdivision;

* projects that have prepared and submitted on or before **November 1, 1996** a draft environmental impact report pursuant to MEPA, MGL c.30 §62B. (DEP may grant an extension of this time limit at the written request of the applicant and for just cause);

* projects for which a building permit has been filed on or before **October 1, 1996** and the permit has been granted on or before **April 1, 1997**. The conservation commission may grant one extension of no more than 60

days upon written request of the applicant and for just cause;

* projects for which a definitive plan has been approved or endorsed on or before **August 1 1996** pursuant to the subdivision control law, MGL c.41 §81U;

* activities subject to a protective order pursuant to MGL c.21 §17B, the Scenic Rivers Act;

* activities associated with wastewater treatment plants and their related structures, conveyance systems and facilities;

* activities subject to a Chapter 91 Waterways license or permit, or authorized under Chapter 91 by a special act prior to 1973;

* any riverfront area that is now or formerly associated with historic mill complexes including but not limited to mill complexes in Holyoke, Taunton, Fitchburg, Haverhill, Methuen, and Medford; or

* the renovation of cranberry bogs that have been abandoned since 1959 on property currently in agricultural use.

20. **Is the renovation of abandoned cranberry bogs subject to the Wetlands Protection Act?**

The Rivers Protection Act exempts the renovation of abandoned cranberry bogs from the Wetlands Protection Act and all other state laws. However, the Rivers Protection Act directs DEP to develop a permitting process and regulations for this activity that is separate from the Wetlands Protection Act but which will protect the eight interests of the Wetlands Protection Act. The Rivers Protection Act also states that the renovation of abandoned cranberry bogs shall not adversely impact the habitat of endangered or threatened species defined by the Natural Heritage and Endangered Species Program; be located within a defined Zone II aquifer; be located within an Area of Critical Environmental Concern (ACEC); or contain a navigable stream as defined in the Chapter 91 waterways regulations.

21. **Does the Rivers Protection Act affect proposed local ordinances, bylaws or regulations regarding agriculture or aquaculture?**

Municipalities must provide notice of proposed ordinances, bylaws, or regulations, that address agriculture or aquaculture to the Farmland Advisory Committee seven days prior to the municipalities' public hearing.